IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4560 of 2007
With
CIVIL APPLICATION No. 11992 of 2007
In
FIRST APPEAL No. 4560 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
CHANDRIKABEN WD/O. SORABJI MANAJI ZALA & 7 - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1,
MR JM BAROT for Defendant(s) : 1 - 5.
NOTICE SERVED for Defendant(s) : 6, 8,
DELETED for Defendant(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.R. SHAH)

1. This appeal, under the Motor Vehicles Act, is directed against the judgment and award dated 30.12.2006 passed by the Motor Accident Claims Tribunal (Auxi.), Patan in M.A.C.P. No.1992 of 2002 (Old No.542 of 1996) while partly allowing the claim, the Claim Tribunal has directed the appellants to pay a sum of Rs.12,85,140/- with interest thereon at the rate of 9% per annum from the date of the petition till realization and also proportionate cost to respondent Nos. 1 to 6 herein – original claimants, in so far as the challenging the amount of quantum to the extent of Rs.2,80,000/-. Thus, the appeal filed by the appellant – original opponent No.3 – The New India Assurance Company Limited, is restricted to Rs.2,80,000/-. The appellant has not challenged the rest of the judgment and award and the claim and the amount awarded to the original claimants.

2. Briefly stated, the facts of the case are that in a vehicular accident that took place on

13.04.1996 between the Truck No. G.R.Z.-1696 and the Bullet driven by deceased – husband of original claimant no.1 i.e. Sorabji and father of respondents nos. 2 to 6 – original claimants nos. 2 to 6, sustained serious injuries and thereafter, scummed to injury and died. Respondent Nos. 1 to 6 – original claimants filed claim petition No.1992 of 2002 for getting compensation on the death of Sorabji – husband of respondent No.1 – herein and father of respondent Nos.2 to 6 herein and in all claimed Rs.17 lacs by way of compensation for untimely death of the deceased. It was the case on behalf of the original claimants that deceased Sorabji was serving as a Principal in the School and at the relevant time, he was getting Rs.8000/- p.m. by way of salary and was also getting Rs.1000/- p.m. towards paper examination and supervision fees, in all he was earning Rs.9,000/- p.m. and accordingly claimed Rs.17 lacs.

3. The application was opposed by the appellant – The New India Assurance Company Ltd. by filing reply to the claim petition. An affidavit was filed by applicant No.1 i.e. respondent No.1 herein at

Exh.21 and she was cross examined. Claimants examined one Hajibhai Pitabhai Ahir serving as a Principal at Samega School where deceased was serving. He was examined at Exh.54. He produced pay slip and stated that at the relevant time when deceased Sorabji died his basic salary was Rs.9397/- and was aged 45 years and if he would not have untimely died, he would have retired on completion of 58 years on 01.01.2005; that his basic salary would have been Rs.11,850/- p.m. and would have got Rs.20,480/- net. The learned Tribunal on appreciation of evidence of applicant no.1, evidence of Principal – Hajibhai Pitabhai Ahir and other documentary evidence, considered loss to the family at Rs.11,010/- p.m. i.e. Rs.1,32,120/- per annum and taking 10 multiplier held that original claimants are entitled to Rs.13,21,200/- towards future economic loss and held deceased Sorabji 5% contributory negligent and deducted 5% and further awarded Rs.10,000/- towards loss of expectation of life and Rs.20,000/- towards after death expenditure, in all awarded Rs.12,85,140/-. Being aggrieved and dissatisfied with the judgment and award passed by

the learned Tribunal in awarding Rs.12,85,140/- the appellant – original opponent No.3 has preferred the present First Appeal restricting to the extent of Rs.2,80,000/-.

4. Ms.Anushree Kapadia, learned Advocate appearing on behalf of Ms.Megha Jani, learned Advocate for the appellant has submitted that the learned Tribunal has erred in taking monthly income of the deceased to be Rs.9550/- at the time of accident. It is submitted that the learned Tribunal has failed to appreciate that as per the salary slip of the deceased for the year 1995 – 1996, the gross salary was Rs.1,10,622/-. Out of the aforesaid amount, the learned Tribunal ought to have deducted Rs.1800/- towards H.R.A., Rs.900/- towards medical allowances, Rs.240/- towards professional tax and Rs.11,000/- towards income tax and ought to have taken the salary of the deceased at Rs.96,682/- p.a. / Rs.8056/- p.m. It is submitted that the learned Tribunal has erred in considering Rs.33,030/- as the salary that the deceased would have received at the time of superannuation. It is submitted that

the said figure appears to be exaggerated. It is submitted that the learned Tribunal ought to have taken Rs.18,000/- as salary that the deceased would have earned at the time of his retirement considering that the deceased was aged 48 years at the time of accident. Ms.Kapadia, learned Advocate has relied upon decision of the Hon'ble Supreme Court in the case of ***Asha and Ors. V/s. United India Insurance Co.Ltd. And Anr.*** reported in *2004 ACJ 448*, more particularly para-8 of the said decision and has submitted that as held by the Hon'ble Supreme Court loss suffered by the claimants is the amount which they would have been receiving at the time when the deceased was alive and the dependents would only be receiving the net amount less 1/3rd personal expenses of the deceased. It is further submitted that even otherwise the learned Tribunal has materially erred in including Rs.3000/- p.m. into the income of the deceased by way of paper examination and supervision charges which would be ad-hoc and as such for which there is no supporting evidence. It is submitted that even it was not the case on behalf of the claimants in the application as well as in the affidavit of the

original claimant no.1 that he was getting Rs.3000/- per month by way of paper examination and supervision charges. It is submitted that as such it is the case on behalf of the claimants that the deceased was getting Rs.1000/- per month towards paper examination and supervision charges. Under the circumstances, it is requested to allow the appeal to the aforesaid extent.

5. The appeal is opposed by Mr.Barot, learned Advocate appearing on behalf of the original claimants. It is submitted that in the facts and circumstances of the case and on appreciation of evidence, and relying upon the decision of the Division Bench of this Court in the case of ***Suryaben Harisinhbhai Bilwal and Ors. V/s. Ataullahkhan Methabkhan Lalkhan Pathan and ors.*** reported in *2002 ACJ 638*, when the learned Tribunal has arrived at the loss of Rs.11010/- p.m. on the death of the deceased, it is not required to be interfered with by this Court. It is submitted that it was the case on behalf of the claimants that deceased was getting Rs.1,000/- p.m. by way of paper examination charges

and supervision and by the time he would have reached the age of superannuation, he would have earned Rs.3,000/-, therefore, the learned Tribunal has rightly awarded Rs.12,85,140/-. Therefore, it is requested to dismiss the present appeal.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. Learned Advocates appearing on behalf of the respective parties have taken us to the Record and Proceedings of the case and have produced copies of the relevant evidence oral as well as documentary. We have gone through the Record and Proceedings as well as the deposition of the original claimant No.1 and one Hajibhai Pitabhai Ahir who was examined in support of the claim petition at Exh.54. We have also considered relevant documentary evidence inclusive of the salary slip. On evidence it has come that deceased was getting basic salary of Rs.9550/- p.m. at the time of accident and that if he would not have died in vehicular accident, he would have retired on attaining the age of superannuation on 01.01.2005 and

on that day his basic salary would have been Rs.11,850/- p.m. and he would have got Rs.20,480/- net. Now considering the decision of the Division Bench of this Court in the case of *Saruyaben* (supra) to find out the income of the deceased for the purpose of granting compensation, mean salary which was received by the deceased at the time of accident and which he would have got at the time of superannuation is to be taken. Thus considering deposition of Hajibhai Pitabhai Ahir basic salary of the deceased was Rs.9550/- p.m. at the time of accident and he would have got Rs.20,480/- p.m. At the time of superannuation and taking mean of the same it would come to Rs.15015/- p.m. and deducting 1/4th towards personal expenses of the deceased, it would come to Rs.11,262/-. The learned Tribunal has deducted 1/3rd towards personal expenses of the deceased. However, considering the units i.e. One of the widow, one deceased and two sons (though daughters were there same can be excluded as they would have married). 1/4th towards personal amount of the deceased is to be excluded for the purpose of considering dependency benefits. It appears that

learned Tribunal has erred in including Rs.3000/- p.m. in the income of the deceased by way of paper examination charges and supervision charges, for which there is no documentary evidence at all. Even in the Claim Petition as well as in the affidavit of original claimant No.1, it is their own case that deceased was getting Rs.1000/- p.m. by way of paper examination charges and supervision charges. Even there is no reference to getting paper examination charges and supervision charges in the deposition of Hajibhai Pitabhai Ahir. Thus in absence of supporting documentary evidence, the learned Tribunal has materially erred in including Rs.3000/- p.m. in the income of the deceased. The learned Advocate appearing on behalf of the appellant is justified and also right in making the submission that while considering the income for the purpose of compensation amount of income tax as well as Professional tax is to be deducted. Thus Rs.916/- p.m. towards income tax is further to be deducted out of Rs.11,262/-. For the purpose of dependency benefit we may take amount of Rs.10,400/- instead of Rs.11,010/- calculated by the learned Tribunal.

Amount of Rs.10,400/- can safely be considered as dependency benefits to the claimants i.e. Rs.10,400/- x 12 = Rs.1,24,800/- p.a. and applying multiplier of 10, the claimants would be entitled to get Rs.12,48,000/- towards future economic loss to them on the death of the deceased. The claimants would also entitled to Rs.10,000/- towards loss of expectation of life and Rs.20,000/- towards after death expenditure. Thus, the claimants would be entitled to Rs.12,78,000/-. However, deceased is also held contributory negligent to the extent of 5% and deducting Rs.63900/-, the claimants would be entitled to Rs.12,14,100/- towards compensation instead of Rs.12,85,140/- awarded by the learned Tribunal and to that extent the judgment and award passed by the learned Tribunal is to be modified. At this stage, it is also required to be noted that as such deceased was seriously injured and was hospitalized and after sometime he scummed to injuries and thus some amount towards pain, sufferings to the deceased can be awarded. However, neither the claimants have claimed in the claim petition nor have filed any cross objections. Under

the circumstances, the claimants would be entitled to Rs.12,14,100/- for untimely death of the deceased – Sorabji, husband of original claimant No.1 and father of respondent Nos. 2 to 6 herein. Rest of the judgment and award is not required to be interfered with.

8. For the reasons stated above, the appeal succeeds in part and the judgment and award passed by the learned Tribunal in M.A.C.P.No. 1992 of 2002 is modified to the extent that the claimants in the claim petition would be entitled in all Rs.12,14,100/- instead of Rs.12,85,140/- as awarded by the learned Tribunal with 9% interest p.a. from the date of claim petition till realization. However, there shall be no order as to costs.

9. So far as Civil Application No.11992 of 2007 filed by the Insurance Company is concerned, in view of the disposal of the main appeal, no order is required to be passed. However, it appears that the Insurance Company has deposited entire amount which is lying with the learned Tribunal. Thus, the learned

Tribunal is directed to invest and disburse the amount in favour of the original claimants considering the award at the rate of Rs.12,14,100/- + 9% interest p.a. from the date of the application till realization and is directed to pass an order in such a manner that same is in the benefit of the original claimants and is directed to see that not more than 20% of the amount is paid to the claimants by cash. Rest of the amount is to be deposited / invested in the Fixed Deposit for a period of 5 (five) years and the claimants would be entitled on the periodical interest on the same. Rest of the amount calculated on the basis of the present judgment and award be returned to the Insurance Company. With these, Civil Application No.11992 of 2007 is also disposed of.

[J.R.Vora,J.]

[M.R.Shah,J.]

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